CITY COUNCIL AGENDA REPORT



MEETING DATE: SEPTEMBER 6, 2005

ITEM NO:

SUBJECT: APPEAL OF PLANNING APPLICATION PA-05-16

1676 TUSTIN AVENUE (BEACH PIT BBQ) AND

411 EAST 17TH STREET (FRAZEE PAINT), COSTA MESA

DATE: AUGUST 25, 2005

FROM: DEVELOPMENT SERVICES DEPARTMENT – PLANNING DIVISION

PRESENTATION BY: WENDY SHIH, ASSOCIATE PLANNER

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714)754-5136

RECOMMENDED ACTION

Conduct public hearing and adopt resolution either upholding, reversing, or modifying Planning Commission's decision.

BACKGROUND

At their meeting of August 8, 2005, by a vote of 4 to 0 (Bill Perkins absent), Planning Commission approved Planning Application PA-05-16 to allow off-site parking and shared parking at 411 East 17th Street (Frazee Paint), to accommodate the outdoor seating areas for the Beach Pit BBQ restaurant located at 1676 Tustin Avenue, but denied the applicant's request for an outdoor television behind the restaurant. The Planning Commission determined that adequate parking is available at the Frazee Paint property to allow shared and off-site parking for the restaurant. The Planning Commission denied the applicant's request for an outdoor television because it would encourage higher noise levels due to cheering or other forms of audience participation, which would negatively impact the residential properties to the south.

On August 15, 2005, a neighboring resident (Grant D. McNiff) appealed their decision on behalf of the Mesa Heights Homeowners Association alleging the project does not meet parking requirements, and he feels that a restaurant with outdoor dining is not a compatible use next to residential properties.

ANALYSIS

The property containing Beach Pit BBQ is zoned C1 (Local Business District). The site contained a nonconforming residence, which was reconstructed to accommodate the restaurant. The Zoning Code allows a restaurant in a C1 zone within 200 feet of a residential zone if it complies with the City's development standards and performance criteria. These include buffering requirements from the residential property, no food or

beverage service between 11 p.m. and 6 a.m., and no truck deliveries between 8 p.m. and 7 a.m. Since Beach Pit BBQ will comply with these standards and hours of operation limitations, it is a permitted use at 1676 Tustin Avenue.

The Code also allows outdoor seating for restaurants as long as the outdoor seating areas do not encroach into required street setback, parking, and landscaping. The proposed seating areas do not encroach into required street setback or interior landscaping, and the required parking can be provided off-site, as discussed below, without impacting parking at that site.

According to the applicant, the exhaust system for the restaurant is designed to contain all the heat and smoke until an evacuation button is released, approximately once or twice a day. The restaurant satisfies all Building and Safety Codes. As mentioned in the appellant's letter, there is a grade difference between the restaurant property and the residential properties to the south. An 8-foot high (measured from the restaurant property) with a 2-foot retaining wall was constructed along the southern property line, in compliance with the Zoning Code.

Off-Site Parking

The six on-site parking spaces are adequate to support the indoor seating area. However, the applicant is proposing a total of 887 square feet of outdoor seating area (278 square feet in front of the restaurant and 609 square feet behind the restaurant). Since additional parking spaces are required beyond that available on-site (23 spaces required; 6 provided), the applicant requested a conditional use permit to allow off-site parking to accommodate the outdoor seating areas. A minor conditional use permit is also required to deviate from shared parking requirements at the off-site parking lot (48 spaces total required for Frazee Paint and outdoor dining areas for the Beach Pit BBQ restaurant; 20 spaces existing).

The applicant proposes to use only the front outdoor dining area during lunch time on week days and both the front and rear outdoor dining areas during dinner (after 5 p.m.) and all day on weekends. Code requires 16 parking spaces during lunch and 23 spaces during dinner. There are 6 on-site parking spaces, which means 10 spaces will be provided off-site at 411 East 17th Street during lunch and 17 spaces during dinner and weekends.

The Frazee Paint property is legal, nonconforming with respect to parking. Current Code requires 31 parking spaces for the 7,800 square foot retail building. The property contains 20 spaces. A minor conditional use permit is required to deviate from shared parking requirements because Beach Pit BBQ needs a maximum of 17 parking spaces at this property to accommodate their outdoor patio seating.

The chart below summarizes required and existing parking spaces at both lots:

	1676 Tustin Ave. Beach Pit BBQ	411 East 17 th St. Frazee Paint
Building	1,370 sq.ft.	7,800 sq.ft.
Outdoor Seating (Lunch/Dinner and Weekends)	887 sq.ft (278 sq.ft./887 sq.ft.)	N/A
Parking Required	23 spaces	31 spaces
Parking Provided	6 spaces*	20 spaces**

Off-site parking for 17 spaces at 411 East 17th Street requested.



^{**} Legal, nonconforming.

As mentioned in the Planning Division staff report, Frazee Paint is a supplier of paint products primarily to contractors, and the majority of their customer traffic or business is in the early morning before the Beach Pit BBQ opens. The applicant conducted a parking survey of the parking lot at various hours during weekdays and found that no more than two cars are parked at that site at any given time during the hours that Beach Pit BBQ will be open. Frazee Paint is closed at 5 p.m. Monday through Friday and closed on Saturday and Sunday. Since Frazee Paint's parking lot contains 20 spaces and no more than two spaces are used at any given time after 10 a.m., there is more than adequate parking available for use by Beach Pit BBQ. Since the lots back up to each other, gate access will be provided between the lots. Restaurant patrons will have safe and easy access to and from the off-site parking lot since they will not be required to cross streets or other properties.

The Planning Commission approved the off-site and shared parking with a condition stipulating that if parking becomes an issue, the applicant will be responsible to institute whatever operational measures are necessary to minimize or eliminate the problem, including, but not limited to, elimination or reduction of the outdoor dining areas. A condition was also included to require a land use restriction (LUR) be recorded on both properties to provide notice to future owners of the parking arrangement. The LUR can be terminated at any time by either property owner, at which time the restaurant may no longer have any outdoor dining areas.

ALTERNATIVES CONSIDERED

If the Planning Commission's decision is upheld, Beach Pit BBQ would be allowed to have off-site parking at 411 East 17th Street to accommodate their outdoor seating.

If the Planning Commission's decision is overturned, the restaurant may not have any outdoor seating. The City Council may decide to approve or disapprove the minor conditional use permit for an outdoor television.

FISCAL REVIEW

Fiscal review is not required.

LEGAL REVIEW

Legal review is not required.

ENVIRONMENTAL REVIEW

Pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines, this project is exempt from CEQA.

CONCLUSION

The Planning Commission found that adequate parking exists at 411 East 17th Street to allow off-site parking for Beach Pit BBQ. Based on the parking survey and the nature of the Frazee Paint business, no more than 2 parking spaces are typically occupied during the hours that the restaurant will be open. The applicant feels that the restaurant with outdoor seating and off-site parking would negatively impact the residents.

WENDY SHIH Associate Planner

DONALD D. LAMM, A CP

Deputy City Mgr. - Dev. Svs. Director

Attachments:

Zoning/Location Map

Plans

Photo Exhibit

Draft City Council Resolution Exhibit "A" – Draft Findings

Exhibit "B" - Draft Conditions of Approval

Appeal Application

Minutes of Planning Commission meeting of August 8, 2005

Planning Division Staff Report Planning Commission Resolution

Exhibit "A" – Findings Exhibit "B" - Conditions

Distribution:

City Manager

Assistant City Manager Acting City Attorney

Deputy City Manager-Development Svs. Dir.

Public Service Director

City Clerk (2) Staff (4) File (2)

Tim Decinces

711 W. 17th St., B12 Costa Mesa, CA 92627

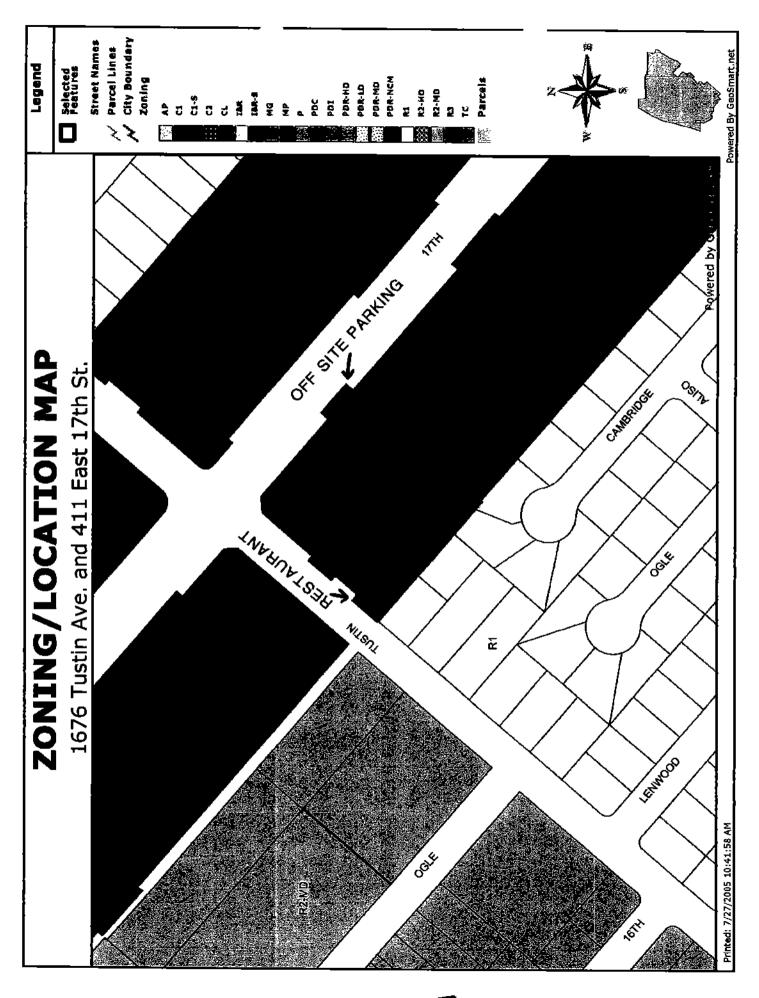
Jane Caldwell 493 Abbie Way

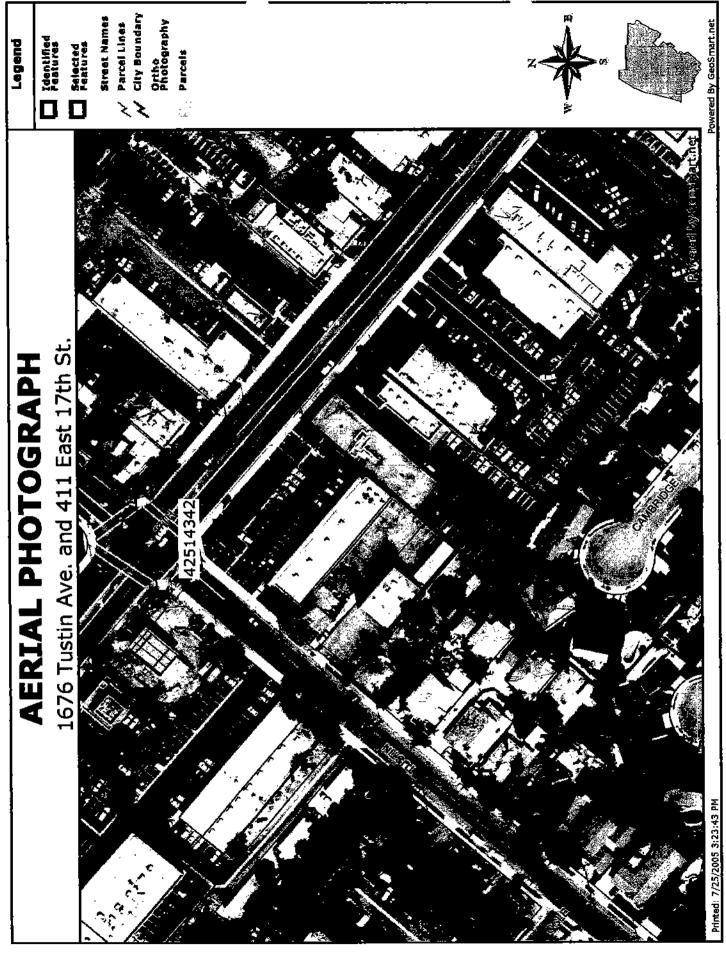
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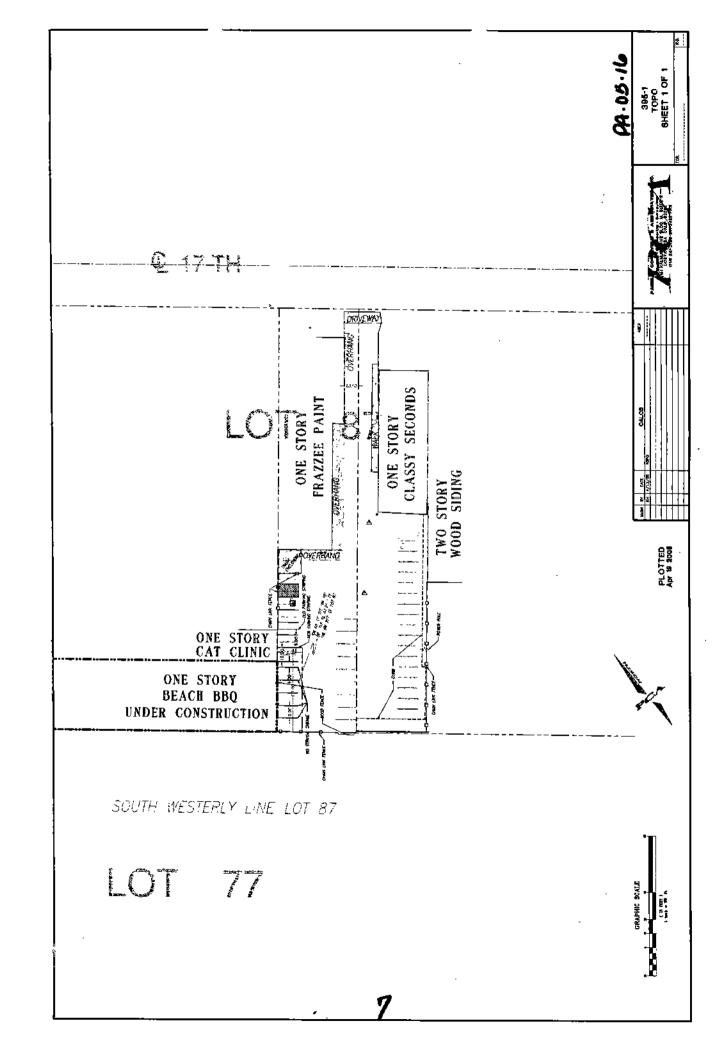
Grant D. McNiff 1672 Tustin Ave.

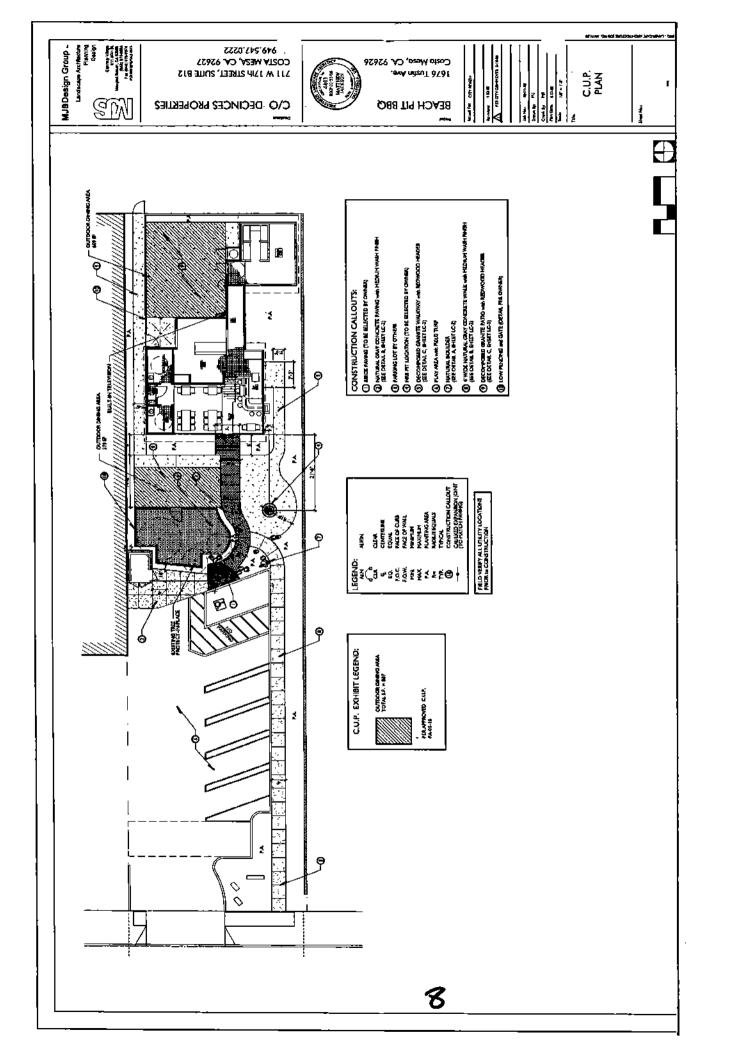
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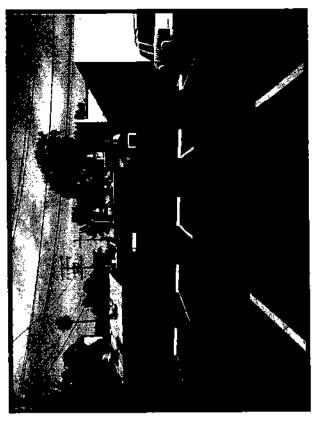
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RESOLUTION NO.	
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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA APPROVING A PART OF PLANNING APPLICATION PA-05-16

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Tim Decinces, authorized agent for Mike Simonian and Jane Caldwell, with respect to the real property located at 1676 Tustin Avenue (Beach Pit BBQ) and 411 East 17th Street (Frazee Paint), requesting approval of a conditional use permit to allow off-site parking at 411 East 17th Street to accommodate outdoor dining areas for Beach Pit BBQ and minor conditional use permits to deviate from shared parking requirements at 411 East 17th Street and to allow outdoor activities (a television outdoors behind the restaurant) at 1676 Tustin Avenue; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on August 8, 2005, and a part of PA-05-16 was approved by Planning Commission; and

WHEREAS, the item was appealed by Grant D. McNiff on behalf of Mesa Heights Homeowners Association, to the City Council on August 15, 2005; and

WHEREAS a duly noticed public hearing was held by the City Council on September 6, 2005;

NOW, THEREFORE, BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the City Council of the City of Costa Mesa hereby **APPROVES** Planning Application PA-05-16 with respect to the conditional use permit for offsite parking and a minor conditional use permit for deviation from shared parking requirement at 411 East 17th Street and **DENIES** the minor conditional use permit for the outdoor television, for the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the Staff Report for Planning Application PA-05-16 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B". Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

PASSED AND ADOPTED this 6th day of September, 2005.

	Mayor of the City of Costa Mesa
ATTEST:	

STATE OF CALIFORNIA) COUNTY OF ORANGE)ss CITY OF COSTA MESA)

I, Julie Folcik, Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the 6th day of September 2005.

Deputy City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa

EXHIBIT "A"

FINDINGS

- A. The proposed conditional/minor use permits for off-site parking and deviation from shared parking requirements comply with Costa Mesa Municipal Code Section 13-29(e) because:
 - 1. The proposed use is compatible and harmonious with uses on surrounding properties.
 - Safety and compatibility of the design of buildings, parking area, landscaping and other site features, which may include functional aspect of the site development such as automobile and pedestrian circulation, has been considered.
 - 3. The proposed use complies with performance standards for a restaurant business.
 - 4. The project is consistent with the General Plan.
 - 5. The planning application is for a project-specific case and does not establish a precedent for future development.
 - 6. The cumulative effect of all planning applications has been considered.
- B. The conditional/minor use permits for off-site parking and deviation from shared parking requirements substantially comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed use is substantially compatible with developments in the same general area. Granting the conditional/minor use permits will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, based on the parking survey and the nature of the Frazee Paint business at 411 East 17th Street, adequate parking is available to allow shared/off-site parking for the Beach Pit BBQ at 1676 Tustin Avenue. Granting the conditional/minor use permits will not allow a use, density or intensity, which is not in accordance with the general plan designation for the property.
- C. The minor conditional use permit for an outdoor television does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed outdoor use is not compatible with developments in the same general area. Granting the minor conditional use permit will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, the property abuts sensitive, residential uses to the south and the outdoor television will negatively impact the residential properties. Sporting events and videos are likely to encourage higher noise levels due to cheering or other forms of audience participation and interaction. Since the adjacent homes are two-story, they are susceptible to higher noise levels.
- D. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA.
- E. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"

CONDITIONS OF APPROVAL

Plng.

- 1. If parking shortage or other parking-related problems arise, the applicant shall institute whatever operational measures are necessary to minimize or eliminate the problem, including, but not limited to, elimination or reduction of the outdoor dining areas.
- 2. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute whatever security and operational measures are necessary to comply with this requirement.
- 3. The conditional and minor conditional use permits herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or if, in the opinion of the development services director or his designee, any of the findings upon which the approval was based are no longer applicable.
- 4. A copy of the conditions of approval for the conditional use permits must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
- 5. A land use restriction executed by and between the property owner of 1676 Tustin Avenue, 411 East 17th Street, and the City of Costa Mesa, shall be recorded. The land use restriction shall state that the off-site parking area shall consist of 17 parking spaces at 411 East 17th Street. The applicant shall submit to the Planning Division a copy of the legal description for the property, and either a lot book report or current title report identifying the current legal property owner so the document may be prepared. The land use restriction shall be recorded prior to use of the off-site parking and on-site outdoor dining areas.

P.O. BOX 1200 COSTA MESA, CALIFORNIA 92626 APPLICATION FOR APPEAL OR REHEARING

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Applicant Name MESA Heights Home owners Assessed	4 in
Applicant Name MESA Heights Home owners Associate Address 1672 Tustin av. Costa Mesa CA. 9	7/27
Phone 949-646-9342 Representing GRANT D. HCNIFT	
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SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:

MESA HEIGHTS HOMEOWNERS ASSOCIATION

August 12, 2005

To: Costa Mesa City Council

Costa Mesa Planning Department

Re: Approval of Planning Application PA-05-16

Please consider this correspondence our formal appeal to your Planning Commission Decision rendered at the Planning Commission Hearing dated August 8, 2005 regarding the above referenced Planning Application PA-05-16.

To allow additional off-site parking in order to accommodate outdoor patio seating is not in the best interests of the neighborhood and local residents. This off-site parking would create another potential noise disturbance. The outdoor dining will most certainly be a source of noise disturbance as it would be closer than any other businesses. 1676 Tustin Avenue was not initially zoned or intended via the General Plan to be a restaurant. Also, we are extremely concerned about the dissemination of smoke that carries unhealthy toxins and odors rendered by "barbecue".

You mention in your Planning Commission Agenda Report that the residential property to the south is separated by an 8-foot block wall – this is erroneous, as the southerly residential property is several feet higher than the proposed barbecue restaurant. The 8-foot block wall on the subject property is 8 feet tall, but on the southerly residential property it ranges from 5 feet 3 inches to 6 feet 3 inches tall! This "so called 8 foot block wall" is significantly lower than the fence it replaced.

The Beach Pit Barbecue is accepting adjacent property that was not designated to provide parking for their location and type of use. A more thorough and in depth examination of the impact of this parking usage is mandatory. The calculation of parking spaces available also appears erroneous.

At the Regular Meeting of the City Council of the City of Costa Mesa dated March 3, 2003, the then Mayor Robinson supported the residential rezone option. A motion was made by Mayor Robinson, and carried 4-1, directing staff to return with information about rezoning the property to residential. Clearly the City Council agreed with us.

Many years ago the Mesa Heights HOA settled a lawsuit with the City of Costa Mesa as a result of the approval of the Newport Office Tower at 485 East 17th Street that was determined to be an invasion of our privacy. To this day we incur disruption, distraction and invasive business operational noises from restaurant-type businesses on 17th Street. The impact to our local neighborhood is apparent and obvious. It is an intrusion and disturbance that interrupts our right to "a quiet use and enjoyment of our property".

In summary, the main issues are:

1. Use of adjacent parking

- 2. Disruption of our quiet use and enjoyment
- 3. Invasion of our privacy
- 4. Noise control and abatement
- 5. Dissemination of smoke from barbecue into our homes and adjacent neighborhood

As a result of the above information we request that you reconsider your approval of this variance permit. It will create yet another interruption to our quiet use and enjoyment.

If you do not protect our PROPERTY OWNER RIGHTS, which include QUIET USE AND ENJOYMENT OF OUR PROPERTY, and PROTECT US FROM THE IMPACT OF SMOKE AND PARKING ISSUES, we have no choice but to seek legal remedies.

Thank you for your consideration.

Sincerely,

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Serbara Hoffmana Costa Mesa, CA 92627

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Serbara Hoffmana Costa Mesa, CA 92627

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Costa Mesa,



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT, PLEASE CONTACT THE CITY CLERK'S OFFICE AT (714) 754-5121